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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,043	03/27/2004	Clifford Robert Parks		2125

7590 04/20/2005
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EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,043

Applicant(s)

PARKS, CLIFFORD ROBERT

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- application filed 3/27/04*
- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/27/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 8, Applicant should place single quotation marks around "CLASSIC PINK" as this is the proper way to designate a cultivar name.

B. Page 2, lines 10 and 16, Applicant states "Berenice". It appears this name may actually be "Barenice". Applicant should review the spelling of the cultivar and set forth the correct name and/or spelling in the specification.

Detailed Action

C. Page 2, lines 30 and 31, Applicant states the instant plant's characteristics have been determined stable during successive generations. However, this does not mean the instant plant reproduces true to type in successive generations of asexual reproduction. The instant plant must reproduce true to type in order to receive a U.S. Plant Patent. If such is accurate, applicant should state in the specification --'Classic Pink' reproduces true to type in successive generations of asexual reproduction.--.

D. Page 4, line 26, Applicant states "Bernice". It appears this name may actually be "Barenice". Applicant should review the spelling of the cultivar and set forth the correct name and/or spelling in the specification.

E. Page 4, line 27, This recitation is not understood as it is unclear what applicant is intending. It is suggested that applicant delete this recitation from the specification.

F. Page 6, lines 3 and 4, Applicant states branch coloration is "174B" and "165A". However, applicant has previously stated branch coloration is "156C" on page 5, line 29. These recitations are contradictory. Correction and/or clarification is necessary.

Detailed Action

G. Page 6, lines 19 and 20, Applicant sets forth two colorations for adaxial vein color. It appears applicant may have intended one to be adaxial and the other to be abaxial. Correction and/or clarification is necessary.

H. Page 6, line 26, Applicant states "slight smell of vegetation". This recitation is not understood as it is unclear what applicant is intending "slight smell of vegetation" to mean. Correction and/or clarification is necessary.

I. Page 7, lines 11-16, Applicant should set forth in the specification additional information relative to the instant plant's petal including the typical and observed petal length, width, and base descriptor.

J. Page 7, line 26, Applicant sets forth a coloration for the calyx. However it is uncertain whether the coloration set forth is for the upper, lower, or both surfaces of the sepals. Applicant should set forth in the specification a coloration for the upper and lower surfaces of the sepals with reference to the employed color chart.

Detailed Action

K. Page 7, lines 27-30, Applicant should set forth in the specification additional information relative to the instant plant's sepals including the typical and observed sepal length and width, if readily available.

L. Page 8, line 1, Applicant states "all flower parts" appear to be changed to petals. It appears applicant may have intended to state "reproductive organs" as this would be more correct to state in this instance. Also, applicant states "appear". Either the reproductive organs have changed to petals or they haven't. Correction and/or clarification is necessary.

M. Page 8, lines 2 and 4, Applicant states "None apparent" then states "although inventor has noted occasional" and "inventor has observed". These recitations are contradictory. If the inventor has observed these reproduction organs than applicant should delete "Non apparent" from the specification and delete the recitation "None observed: all flower parts appear to be changed to petals." from line 1 of the same page. Correction and/or clarification is necessary.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Detailed Action

Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

